

Department of Energy

§ 1017.16

(c) *Resolution of disagreements.* Since the DOE has overall cognizance over all UCNI and sole responsibility for implementation of section 148 of the Atomic Energy Act, the Secretary has the final authority to resolve all disagreements concerning—

(1) The identification of UCNI that is within the cognizance of more than one DOE organization or of a Government agency in addition to the DOE; or

(2) The control or decontrol or all or any part of any document or material originated by or for the DOE or another Government agency that contains UCNI.

(d) *Notification of determinations.* An official making a determination concerning joint information, documents, or material shall inform affected organizations within the DOE or in other Government agencies of his or her determination.

(e) *Other government information control systems.* A document containing information within the scope of section 148 of the Atomic Energy Act may also contain information within the scope of other government information control systems. Where this is the case, the requirements of the more restrictive system apply.

§ 1017.15 Markings on documents or material.

(a) *Documents or material which may contain UCNI.* (1) Any person who originates or has in his or her possession a document or material that the person believes may contain UCNI, may mark in a conspicuous manner the document or material with the notice in the paragraph (a)(2) of this section prior to transmitting the document or material to a Reviewing Official for a formal determination.

(2) Any Authorized Individual who originates or has in his or her possession a document or material that the Authorized Individual believes may contain UCNI, shall mark in a conspicuous manner the document or material with the following notice—

(i) Prior to transmitting the document or material outside of the Authorized Individual's organization;

(ii) Prior to transmitting the document or material to a Reviewing Official; or

(iii) Upon the retirement of the document or material under § 1017.13:

NOT FOR PUBLIC DISSEMINATION

May contain Unclassified Controlled Nuclear Information subject to section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168). Approval by the Department of Energy prior to release is required.

(b) *Documents or material which contain UCNI.* A Reviewing Official shall mark in a conspicuous manner each document or material that the Reviewing Official determines to contain UCNI with one of the following notices:

(1) UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION NOT FOR PUBLIC DISSEMINATION

Unauthorized dissemination subject to civil and criminal sanctions under section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

(2) Not for Public Dissemination

Unauthorized dissemination subject to civil and criminal sanctions under 42 U.S.C. 2168.

(c) *Other markings.* UCNI markings may be applied regardless of any other distribution control markings (e.g., "Official Use Only," company proprietary) that are also on a document or material.

§ 1017.16 Access to unclassified controlled nuclear information.

(a) *Routine access.* (1) A Reviewing Official is an Authorized Individual for documents or material that the Reviewing Official determines to contain UCNI.

(2) An Authorized Individual, for UCNI in his or her possession or control, may determine that another person is an Authorized Individual who may be granted access to the UCNI, subject to the following limitations, and who may further disseminate the UCNI under the provisions of this section. The person to be granted routine access to the UCNI must—

(i) Have a need-to-know in the performance of official duties or DOE authorized activities for the UCNI to which routine access is to be granted; and

(ii) Be a U.S. citizen who is—

(A) A Government employee or a member of the U.S. Armed Forces;

(B) An employee of a Government contractor or subcontractor, or of a prospective Government contractor or subcontractor for the purpose of bidding on a Government contract or subcontract;

(C) A Government consultant or DOE advisory committee member;

(D) A Member of Congress;

(E) A staff member of a congressional committee or of an individual Member of Congress;

(F) The Governor of a State, his or her designated representative, or a State government official;

(G) A local government official or an Indian tribal government official;

(H) A member of a State, local, or Indian tribal law enforcement or emergency response organization; or

(I) A DOE access permittee authorized access by the Secretary under part 725 of this title to Restricted Data applicable to civil use of atomic energy; or

(iii) Be a person who is not a U.S. citizen but who is—

(A) A Government employee or a member of the U.S. Armed Forces;

(B) An employee of a Government contractor or subcontractor; or

(C) A Government consultant or DOE advisory committee member; or

(iv) Be a person who is not a U.S. citizen but who may be granted routine access to UCNI by an Authorized Individual in conjunction with—

(A) An international nuclear cooperative activity approved by the Government;

(B) U.S. diplomatic dealings with foreign government officials;

(C) An agreement for cooperation under section 123 of the Atomic Energy Act; or

(D) Provisions of treaties, mutual defense acts, Government contracts or subcontracts.

(3) The Secretary may impose additional administrative controls concerning the granting of routine access to UCNI by an Authorized Individual to a person who is not a U.S. citizen.

(4) An Authorized Individual may only disseminate UCNI to another Authorized Individual or to a person granted special access to UCNI under paragraph (b) of this section.

(5) The Assistant Secretary for Defense Programs may waive any of the requirements for determination of routine access to UCNI specified in paragraph (a) of this section.

(b) *Special access.* (1) A person not authorized routine access to UCNI under paragraph (a) of this section may submit a request for special access to UCNI to the—

Assistant Secretary for Defense Programs, U.S. Department of Energy, Washington, DC 20585

(2) Such a request must include—

(i) The name, current residence or business address, birthplace, birthdate, and country of citizenship of the person submitting the request;

(ii) A description of the UCNI for which special access is being requested;

(iii) A description of the purpose for which the UCNI is needed; and

(iv) Certification by the requester of his or her understanding of and willingness to abide by these regulations.

(3) The Assistant Secretary for Defense Programs shall base his or her decision to grant special access to UCNI on an evaluation of—

(i) The sensitivity of the UCNI for which special access is being requested (i.e., the worst-case, adverse effect on the health and safety of the public or the common defense and security which would result from illegal use of the UCNI);

(ii) The purpose for which the UCNI is needed (e.g., will the UCNI be used for commercial or other private purposes or will it be used for public benefit to fulfill statutory or regulatory responsibilities);

(iii) The likelihood of unauthorized dissemination by the requester of the UCNI; and

(iv) The likelihood of the requester using the UCNI for illegal purposes.

(4) The Assistant Secretary for Defense Programs shall attempt to notify a person who requests special access to UCNI within 30 days of receipt of the request as to whether or not special access to the requested UCNI is granted. If a final determination on the request cannot be made within 30 days or receipt of the request, the Assistant Secretary for Defense Programs shall notify the requester, within 30 days of the

request, as to when the final determination on the request may be made.

(5) A person granted special access to UCNI is not an Authorized Individual under paragraph (a) of this section and shall not further disseminate the UCNI.

(c) *Notification of responsibilities*—(1) *Routine access.* An Authorized Individual granting routine access to UCNI to another person under paragraph (a) of this section shall notify each person granted such access (other than when the person being granted such access is a Government employee, a member of the U.S. Armed Forces, or an employee of a Government contractor or subcontractor) of applicable regulations and orders concerning UCNI and of any special redistribution limitations that the Authorized Individual determines to apply for the specific UCNI to which routine access is being granted.

(2) *Special access.* The Assistant Secretary for Defense Programs shall notify each person granted special access to UCNI under paragraph (b) of this section of applicable regulations concerning UCNI prior to dissemination of the UCNI to the person.

(d) *Other persons.* Persons not granted routine access to UCNI under paragraph (a) of this section or special access to UCNI under paragraph (b) of this section shall not have access to UCNI.

§ 1017.17 Physical protection requirements.

(a) *General.* UCNI requires protection from unauthorized dissemination. UCNI must be protected and controlled in a manner consistent with that customarily accorded other types of unclassified but sensitive information (e.g., proprietary business information, personnel or medical records of employees, attorney-client information). Each Government agency and Government contractor authorized access to UCNI shall establish and maintain a system for the protection of UCNI in their possession or under their control that is consistent with the physical protection standards established in this section. Each Authorized Individual or person granted special access to UCNI under § 1017.16(b) who receives, acquires, or produces UCNI or a docu-

ment or material containing UCNI shall take reasonable and prudent steps to ensure that it is protected from unauthorized dissemination by adhering to these regulations and their implementing directives.

(b) *Protection in use or storage.* An Authorized Individual or a person granted special access to UCNI under § 1017.16(b) shall maintain physical control over any document or material containing an UCNI notice that is in use so as to prevent unauthorized access to it. When any document or material containing an UCNI notice is not in use, it must be stored in a secure container (e.g., locked desk or file cabinet) or in a location where access is limited (e.g., locked or guarded office, controlled access facility).

(c) *Reproduction.* A document or material containing an UCNI notice may be reproduced to the minimum extent necessary consistent with the need to carry out official duties without permission of the originator, provided the reproduced document or material is marked and protected in the same manner as the original document or materials.

(d) *Destruction.* A document or material containing an UCNI notice may be disposed of by any method which assures sufficiently complete destruction to prevent its retrieval (providing the disposal is authorized by the Archivist of the United States under 41 CFR 101-11.4 and by agency records disposition schedules).

(e) *Transmission.* (1) A document or material containing an UCNI notice must be packaged to prevent disclosure of the presence of UCNI when transmitted by a means which could allow access to the document or material by a person who is not an Authorized Individual or a person granted special access to UCNI under § 1017.16(b). The address and return address must be indicated on the outside of the package.

(2) A document or material containing an UCNI notice may be transmitted by—

(i) U.S. first class, express, certified, or registered mail;

(ii) Any means approved for the transmission of classified documents or material;